



**Billing Code 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 161024999-8248-02]**

**RIN 0648-BG40**

**Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan;  
Authorization of an Oregon Recreational Fishery for Midwater Groundfish Species**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes the use of midwater long-leader gear for recreational fishing in waters seaward of a boundary line approximating the 40 fathoms depth contour off the coast of Oregon. Both charter and private vessels are authorized to use midwater long-leader gear seaward of the 40 fathom seasonal depth closure, while being monitored with the existing Oregon Ocean Recreational Boat Sampling (ORBS) program. The use of midwater long-leader gear is intended to limit bycatch of overfished and rebuilding rockfish species, such as bottom-dwelling yelloweye rockfish, while still allowing for the catch of abundant midwater species such as yellowtail and widow rockfish. The season will occur between April and September, months currently subject to depth restrictions.

**DATES:** Effective April 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Christopher Biegel, phone: 503-231-6291, fax: 503-872-2737, or email: [Christopher.biegel@noaa.gov](mailto:Christopher.biegel@noaa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Electronic Access**

This final rule is accessible via the Internet at the Office of the Federal Register website at <http://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region website at <http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html> and at the Pacific Fishery Management Council's website at <http://www.pcouncil.org>.

### **Background**

Since 2004, NMFS has restricted Oregon recreational groundfish fisheries to shallow depths (< 20-40 fm) during peak effort to reduce interactions with deeper water species, especially yelloweye rockfish. The recreational groundfish fisheries are an important part of the local economy and social fabric in Oregon's coastal communities. From 2011-2015, anglers fished an average of 84,000 recreational groundfish trips per year in the Federal waters off of the Oregon coast, representing about 44 percent of the total Oregon recreational fishery effort during this period. The implementation of deep-water rockfish closures in 2004 left several Oregon ports without any viable groundfish fishing opportunities.

To increase recreational fishing opportunities in these ports and relieve pressure from nearshore reefs, NMFS issued exempted fishing permits (EFPs) to the Oregon Recreational Fishing Alliance and Oregon Department of Fish and Wildlife (ODFW) from 2009-2011 to test the viability of long-leader gear. The long-leader gear tested under this EFP test fishing program and authorized for use by this rule has one line with no more than three hooks, a sinker at the bottom, at least 30 feet (9.14 m) between the sinker and the lowest hook, and a non-compressible float above the hooks. This gear limits interaction with deeper water groundfish species that

inhabit areas close to the seafloor by suspending the hooks well above the seafloor. In 2005, based in part on favorable EFP test fishing results using midwater long-leader gear on Oregon sport charter fishing vessels, the Council requested that NMFS implement regulations authorizing a midwater long-leader fishery in the Federal waters off the Oregon coast.

This final rule authorizes midwater long-leader recreational groundfish fishing seaward of a line approximating the 40 fathom depth curve exclusively off the coast of Oregon (42°00' North latitude [N. lat.] to 46°18' N lat.) from April 1 to September 30. NMFS expects this gear configuration will allow recreational anglers to target abundant and healthy midwater species while avoiding or minimizing interactions with overfished rockfish species. When deploying this gear, anglers are authorized to use artificial lures or flies less than or equal to 5 inches (12.7 cm) in length. However, anglers may not use natural bait, or lures or flies greater than 5 inches (12.7 cm) in length, as was the case under the terms and conditions of the EFP. This final rule retains this prohibition on live bait, which was originally part of the EFP test fishing program to limit impacts to canary rockfish that were overfished at that time, because canary has only recently been declared rebuilt and it is prudent to take actions that are precautionary and limit initial impacts on newly rebuilt species. If desired, NMFS and the Council could work towards removing the prohibition in the future.

Under the action, anglers are also prohibited from possessing lingcod. All other existing state and Federal groundfish regulations, such as bag limits and rockfish conservation areas, remain in effect. ODFW will monitor this fishery through its existing Ocean Recreational Boat Survey. The Council approved language in the definition of long-leader gear that included a prohibition on “large lures.” However, the Council did not define this term. After consultation with ODFW, this final rule defines “large lure” as *over five inches in length*. This definition is

based on industry standard lure sizes commonly used in the recreational fishery.

### **Comments and Responses**

NMFS published a proposed rule for this action on December 12, 2017 (82 FR 60170). We received 67 comments on the proposed rule. We received public comments from 3 recreational fishing organizations, 2 boat owners, 6 charter operators, 1 tackle shop, 3 EFP participants, 32 recreational anglers, and 17 private citizens. These comments are discussed below.

*Comment 1:* All responsive comments supported creation of the midwater long-leader recreational fishery.

*Response:* NMFS agrees, and through this rule is promulgating regulations to allow recreational anglers to use midwater long-leader gear seaward of a line approximating the 40 fathom depth curve exclusively off the coast of Oregon (42°00' N lat.to 46°18' N lat.) from April 1 to September 30.

*Comment 2:* NMFS received five comments on the proposed gear configuration. Two recreational fishermen and one EFP participant commented in support of the gear as proposed. One charter operator proposed changes that would make the gear less likely to tangle. One recreational angler asked that the regulations exempt small vessels such as kayaks from the long-leader gear requirements while participating in the fishery.

*Response:* When the Council was developing this action, Council members discussed the need to develop regulations that reflect the same, or as similar as possible to, the gear configurations used in the EFP to test this fishery. The purpose of this was to ensure that impacts from this fishery would be similar to what occurred under the EFP. Because NMFS did not exempt small vessels, such as kayaks, from the EFP, or test the proposed changes suggested

by the commentor in the EFP, it is difficult for NMFS to accurately predict the impacts associated with these suggestions. Therefore, NMFS will not remove or alter the required long-leader gear configuration, or allow exemptions for small vessels such as kayaks, without further Council discussion and consideration of these changes.

*Comment 3:* NMFS received sixteen comments on the proposed prohibition on natural bait. One charter operator, two EFP participants, and one recreational angler commented in support of the bait prohibition, stating that bait was unnecessary to produce good catches. One boat owner, one recreational fishing organizations, one tackle shop, one charter operator, seven recreational anglers, and one private citizen commented in opposition to the natural bait prohibition. Of these, one charter operator and one recreational angler commented that natural bait was prohibited during the EFP test fishing to avoid bycatch of canary rockfish. Because the canary rockfish stock is rebuilt, and can now be retained, they commented that the bait prohibition is no longer necessary.

*Response:* As noted above in the background section, NMFS will not remove the prohibition on the use of live bait for this fishery at this time. The prohibition on the use of live bait was included in the terms and conditions of the EFPs used to test this fishery as a means to protect the overfished canary rockfish by reducing interactions with the canary rockfish. Since then, canary rockfish has been declared rebuilt. However, NMFS is maintaining the prohibition because NMFS does not know the impacts to canary rockfish that could occur if this prohibition were removed. Those impacts were not tested or evaluated in the EFP test fishing and associated analysis. Additionally, because canary rockfish has only recently been rebuilt, NMFS believes it is important to take a precautionary approach in developing fisheries that could impact this newly rebuilt species. However, starting that discussion with the Council now would interfere

with NMFS's goal to have this rule in place for the 2018 fishing season. April 1 is the start of the fishing season, ensuring that this rule is effective on April 1 will allow fishermen to access areas previously subject to depth restrictions for the entire season. If desired, NMFS and the Council could choose to work towards removing the prohibition in the future.

### **Changes from the Proposed Rule**

We adjusted the proposed rule's regulatory text defining lure size to make it clearer and to assist in enforcement. The text "*not to exceed 5 inches in length*" was changed to "*less than or equal to 5 inches in length*."

### **Classification**

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1854(b)(1)(A), the NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

Because this rule relieves a restriction, it is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act (5 U.S.C. 553(d)(1)). This final rule allows recreational anglers to target groundfish using midwater long-leader gear, from April 1 to September 30, in waters seaward of a boundary line approximating the 40 fathoms depth contour off the coast of Oregon. These months were previously subject to depth restrictions. Therefore, NMFS is setting the effective date for this rule as April 1, 2018, to match the start of the fishing

season and allow recreational anglers the opportunity to use long-leader gear for the duration of the 2018 fishing season.

#### *Final Regulatory Flexibility Analysis*

Section 604 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604, requires federal agencies to prepare a final regulatory flexibility analysis (FRFA) for each final rule. A FRFA was prepared and incorporates the Initial Regulatory Flexibility Analysis (IRFA) and includes a summary of the analyses completed to support the action are included below. A statement of the need for, and the objectives of, this action is contained in the proposed rule and the preamble to this final rule, and is not repeated here. NMFS also prepared a Regulatory Impact Review (RIR) for this action. A copy of the RIR/FRFA is available from NMFS (see the **Electronic Access** section of this preamble). A summary of the FRFA, per the requirements of RFA section 604 follows.

#### Significant Issues Raised by the Public in Response to the IRFA, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

There were no issues raised about the IRFA in the public comments; therefore no changes were made with regard to issues discussed in the IRFA.

#### Description and estimate of the number of small entities to which the rule applies

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The SBA defines a small business as one that is:

- Independently owned and operated;
- Not dominant in its field of operation;
- Has annual receipts that do not exceed –
  - \$20.5 million in the case of commercial finfish harvesting entities (NAIC<sup>1</sup> 114111)
  - \$5.5 million in the case of commercial shellfish harvesting entities (NAIC 114112)
  - \$7.5 million in the case of for-hire fishing entities (NAIC 114119); or
- Has fewer than -
  - 750 employees in the case of fish processors; or
  - 100 employees in the case of fish dealers.

This final rule impacts recreational fish harvesting entities engaged in the Pacific Coast groundfish fishery. An estimated 104 recreational charter entities targeted groundfish in Oregon in 2014. Each of these vessels had an estimated average revenue of \$35,743 from groundfish, from a total annual average revenue of \$116,453, with other significant revenue earned in the salmon, tuna/albacore, and shellfish fisheries.

In 2015 there were 106,504 angler trips in the Oregon recreational groundfish fisheries. This accounted for \$14,225,329 in trip-related expenses (excludes durable goods) and 327 jobs in the state of Oregon.

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<sup>1</sup> The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.



Many charter operations in Oregon earn a majority of their revenue from salmon fishing, however given the natural variability of the salmon fishery year to year, there is a potential for more commercial charter operations to turn to groundfish if the salmon fishery declines.

#### Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements

There are no new reporting and recordkeeping requirements associated with this rule.

#### Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

The economic impact of the measures in this rule are discussed in section 3.4 of the final Environmental Assessment (EA) (see the **Electronic Access** section of this preamble) and are not repeated here. This rule is expected to give recreational charter entities in Oregon increased flexibility to pursue groundfish fishing opportunities, which is expected to provide positive economic impacts. The rule does not limit any existing activity or impose any mandatory new costs on the fleet, so the overall benefit to small entities is expected to be slightly positive, as some or most vessels may not choose to participate in the midwater fishery due to increased fuel costs from the distance required to travel, and because of midwater gear requirements.

The EA analyzed three alternatives in addition to a no action alternative. The preferred alternative (Alternative 1) allows private and charter recreational vessels use long-leader gear seaward of the 40 fm depth curve from April to September. The other two alternatives would have allowed the same vessels to use long-leader gear seaward of the 40 fm depth curve from July to September (Alternative 2) or in the month of August (Alternative 3). All of the action alternatives are expected to result in minor beneficial economic impacts, with the preferred alternative providing the largest window of time for the recreational harvest to occur, and thus providing the greatest likely economic benefits. As all of the alternatives would provide positive

benefits, there were no alternatives rejected that would have mitigated adverse effects on small entities.

### **Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS will send a small entity compliance guide to interested parties via the groundfish email list server. In addition, copies of this final rule and guides (i.e., information bulletins) are available from NMFS at the following website:

*<http://www.westcoast.fisheries.noaa.gov/>.*

### **List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, and Reporting and recordkeeping requirements.

Dated: March 23, 2018.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

### **PART 660–FISHERIES OFF WEST COAST STATES**

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.351, add in alphabetical order the definition of “long-leader gear” as follows:

**§ 660.351 Recreational fishery—definitions.**

\* \* \* \* \*

*Long-leader gear* (also known as Holloway gear) means fishing gear with the following: one fishing line, deployed with a sinker and no more than three hooks, with a minimum of 30 feet (9.14 meters) between the sinker and the lowest hook, and a non-compressible float attached to the line above the hooks. The gear may be equipped with artificial lures and flies less than or equal to 5 inches in length. Natural bait, and lures or flies greater than 5 inches in length, may not be used.

\* \* \* \* \*

2. In § 660.360, paragraphs (c)(2)(i)(B) and (c)(2)(iii)(B) are revised to read as follows:

**§ 660.360 Recreational fishery—management measures.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(B) *Recreational rockfish conservation area (RCA)*. Fishing for groundfish with recreational gear is prohibited within the recreational RCA, a type of closed area or groundfish conservation area. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while within the RCA.

The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.] Off Oregon, from April 1 through September 30, recreational fishing for groundfish is prohibited seaward of a recreational RCA boundary line approximating the 40 fm (73 m) depth contour, except that fishing for flatfish (other than Pacific halibut) is allowed seaward of the 40 fm (73 m) depth contour when recreational fishing for groundfish is permitted, and fishing with long-leader gear (as defined in § 660.351) is allowed seaward of the 40 fm (73 m) depth contour (i.e., within the RCA) from April 1 through September 30. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed at §660.71.

\* \* \* \* \*

(iii) \* \* \*

(B) *Lingcod*. There is a 3 fish limit per day for lingcod from January 1 through December 31. The minimum size for lingcod retained in the Oregon recreational fishery is 22 in (56 cm) total length. For vessels using long-leader gear (as defined in § 660.351) and fishing inside the recreational RCA, possession of lingcod is prohibited.

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